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Decision 06-09-025 September 7, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of New Century Telecom, Inc. (U-5912-C) for Approval of Stock Purchase Agreement and Related Transfer of Control.	Application 02-10-007 (Filed October 8, 2002)

ORDER DENYING APPLICATION FOR REHEARING OF DECISION 06-04-048

I. SUMMARY

This decision addresses the application for rehearing of Decision (D.) 06-04-048, filed by the Helein Law Group (Helein). We have reviewed each and every argument raised in the application, and do not find grounds for rehearing. We accordingly deny the application for rehearing.

II. BACKGROUND

In Application (A.) 02-10-007, New Century Telecom, LLC (NCT) requested authority under Public Utilities Code section 854, subdivision (a)[1] to transfer ownership of NCT from Kathleen Helein to Karyn Bartel. However, the transaction was consummated without Commission authorization in March 2003. On September 12, 2005, NCT sent a letter to the Commission's Consumer Protection and Safety Division (CPSD) that it intended to unilaterally withdraw its application for transfer of control. On September 20, 2005, the assigned Administrative Law Judge (ALJ) sent an e-mail to the parties which stated his intent to prepare a draft decision that, among other things, denies the request to

[1] All section references are to the California Public Utilities Code, unless otherwise stated.

withdraw the application, denies the application, and penalizes NCT for various violations, including Rule 1 of the Commission's Rules of Practice and Procedure[2] ("Notice of Proposed Course of Action"). NCT's authority to operate in California was subsequently revoked by Resolution T-16962 on October 27, 2005, for failure to file an annual report, and failure to remit regulatory surcharges and fees. A Draft Decision was issued on March 23, 2006, which also included a finding of a Rule 1 violation against NCT's legal counsel, the Helein Law Group.

On April 28, 2006, the Commission issued Decision (D.) 06-04-048, which denied A.02-10-007 because NCT was no longer a public utility, and therefore section 854, subdivision (a) did not apply. (D.06-04-048 at p. 2.) The Commission further held that even if section 854, subdivision (a) did apply, the Application would be denied because Bartel is unfit to own a public utility. The Commission specifically found that since Bartel's unauthorized acquisition of NCT, the company had violated Rule 1 of the Commission's Rules of Practice and Procedure (Rule 1), several Commission decisions, and parts of the Public Utilities Code. (Id.)

The Decision fined NCT $55,000 for the violations, and further barred Bartel from owning, operating, or managing a public utility in California until the fine imposed by the Decision is paid and past due surcharges and fees are remitted. The Commission also found that the Helein Law Group (Helein), which represented NCT in these proceedings, violated Rule 1 by providing false information to the Commission. The Decision requires Helein to provide notice in all documents filed at the Commission for the next three years that the Helein Law Group was found to have violated Rule 1. (Id.)

On May 30, 2006, a timely Application for Rehearing of D.06-04-048 was filed by the Helein Law Group. The Application makes the following allegations of legal error in the Decision: 1) The ALJ's Draft Decision was not

[2] All rule references are to the Commission's Rules of Practice and Procedure.

properly served on the Helein Law Group and therefore Helein was deprived of the statutory notice and comment period; 2) the Commission lacks jurisdiction to sanction the law firm in this manner; 3) Helein's representation of its client and the statements made to the Commission did not violate Rule 1; and 4) the Commission's Decision violates Helein's due process rights.

III. DISCUSSION

Before discussing the merits of the Application for Rehearing, we first must address a procedural matter. The Application for Rehearing states "the Helein Law Group, P.C. ("Firm") hereby petitions for rehearing and reconsideration to correct and complete the record and to vacate the captioned Order and rulings contained therein." Although there are some claims raised as to the Rule 1 violation found against NCT, the Application is apparently filed by the Helein Law Group on behalf of itself in order to challenge the imposition of sanctions against it for the Rule 1 violation. There is no indication that the Application is filed by or on behalf of NCT, and specifically does not allege any error with respect to the $55,000 fine levied against NCT.

However, section 1731 provides that applications for rehearing may only be filed by "any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected." The Helein Law Group is legal counsel to NCT and has not identified itself as a party to the proceeding or as a stockholder or bondholder or otherwise pecuniarily interested in NCT. Since the Application clearly states that it is filed by Helein, and does not state that it is filed on behalf of NCT, we cannot presume that the Application was filed on behalf of Helein's client, NCT, which was a party to the proceeding. Accordingly, as Helein is not a party to the proceeding, and does not meet the requirements of section 1731, we would normally reject this Application for Rehearing. However, since the Decision sanctions Helein directly for a Rule 1 violation, we believe it is proper to exercise our discretion and accept this

Application. In order to accept Helein's Application for Rehearing, we accordingly grant the Helein Law Group party status for the limited purpose of filing the instant Application for Rehearing.[3]

We now turn to the merits of Helein's Application for Rehearing.

1. Helein and NCT Were Properly Served With the ALJ's Draft Decision in Accordance With the Public Utilities Code and the Commission's Rules of Practice and Procedure.

Helein first asserts that it was not properly served with a copy of the ALJ's March 2006 Draft Decision, and therefore was deprived of notice and the opportunity to file comments on the Draft Decision, in violation of its due process rights. Helein also asserts that it has not yet been served with a copy of the Draft Decision or the Final Decision. According to Helein, it was only made aware of the adoption of the Final Decision after the fact, in a filing in unrelated litigation.

Helein does acknowledge that an e-mail was received by the Helein Law Group's secretary announcing the availability of the Draft Decision. According to Helein, however, this e-mail was not reviewed by the secretary because there was no listing of one of the firm's attorneys or clients in the e-mail. Helein further asserts that although the e-mail states that "a Notice of Availability has been served by mail on all persons on the service list," neither the attorney listed on the service list (which according to Helein is the senior partner of the Helein Law Group), nor anyone else in the firm, received a copy of the Notice of Availability. Helein further claims that although it received comments filed by CPSD in response to the ALJ's September 20, 2005, Notice of Proposed Course of Action, it did not receive comments filed by Verizon California Inc. (Verizon) or Pacific Bell Telephone Company (Pacific Bell).[4]

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[3] Since the Application for Rehearing does not state it was filed on NCT's behalf, NCT itself is not deemed to have filed an Application for Rehearing of D.06-04-048.

[4] The Application mistakenly refers to the ALJ's September 20, 2005 Notice of Proposed Course of Action e-mail as the "Draft Decision." However, this e-mail clearly indicates the ALJ's "inten[t] to prepare a draft decision"; it is not a draft decision itself. The only

In making its arguments that it was not properly served, Helein refers to section 311, subdivision (d) for the proposition that "the proposed decision of the assigned commissioner or the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay…." Implicit in Helein's argument is the claim that it was not served with a hard copy of the Draft Decision. Helein further points to section 311, subdivision (g)(1) and Rule 77.7 which require a Commission decision to be served on parties and subject to at least 30 days public review and comment prior to voting. Helein claims that because these service rules were not complied with, it was denied notice and an opportunity to comment on the Rule 1 violation which appeared for the first time in the Draft Decision.[5]

We reject Helein's arguments for several reasons. First, Helein omits any reference to the Commission's Rules of Practice and Procedure which further govern how service is effected. The relevant parts of Rules 2.3, subdivisions (c)-(e) provide that a party may serve a Notice of Availability of a document in lieu of all or part of the document to be served if the document is available at a particular URL on the web, and if the Notice of Availability contains a complete and accurate transcription of the URL. If a party wishes to receive a complete copy of the document instead of the Notice of Availability, that party must notify the serving parties. In this case, a Notice of Availability was mailed to the parties on the official service list on March 23, 2006. There is nothing in the record showing that NCT or Helein requested to be served with a complete copy of a document in lieu of a Notice of Availability. Therefore, Helein's argument

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Draft Decision in this case is the ALJ's March 23, 2006. Moreover, no comments were filed by AT&T or Verizon in response to the ALJ's September 20, 2005 e-mail. Comments were, however, filed by AT&T and Verizon in response to the March 23, 2006 Draft Decision. These comments have proofs of service demonstrating that they were served on NCT's attorney of record.

[5] The Application does not make any claim that the Commission's procedure governing service of documents fails to meet due process requirements, only that the procedure itself was not followed.

implying that it should have been served with a hard copy of the Draft Decision, rather than a Notice of Availability of the Draft Decision, is without merit.

Second, under Rule 2.3, subdivision (a), service may be effected by e-mail. According to Rule 2.3.1, subdivision (d), if a person provides an e-mail address for the official service list in a proceeding, a person consents to e-mail service in that proceeding. A person may withdraw consent to e-mail service by serving and filing a notice withdrawing consent in a particular proceeding. A review of the record in this case shows that the attorney of record for NCT is listed on the official service list for this proceeding as follows:

> Loubna W. Haddad
> The Helein Law Group, LLC
> 8180 Greensboro Drive, Suite 700
> McLean, VA 22102

Since at least June, 2004, the e-mail provided for this person on the official service list is smr@thlglaw.com. In this case, a Notice of Availability was e-mailed to the parties on the official service list, in accordance with the Commission's Rules, on March 23, 2006.[6] Again, there is nothing in the record indicating that Helein or NCT withdrew consent to be served by e-mail. Therefore, there is no merit to Helein's claim that it was not properly served by e-mail with a copy of the Notice of Availability of the Draft Decision.

Third, according to Rule 2.3, subdivision (h), it is the responsibility of each person or entity on the service list to provide a current mailing address and, if relevant, current e-mail address, to the Process Office for the official service list. Although the record demonstrates that some courtesy e-mails and other informal communications have been sent to and from other e-mail addresses at the Helein Law Group, according to all of the proofs of services in the record, the e-mail address that appears on the official service list, smr@thlglaw.com, is

[6] The availability of the Draft Decision was also publicly noticed on the Commission's March 24, 2006, Daily Calendar.

the one that has been used throughout this proceeding to effect service of documents. In addition, although the Application claims that Helein's senior partner is the attorney listed on the service list, in fact Loubna W. Haddad is the attorney of record that has been used throughout this proceeding to effect service of documents by mail. There is no request from anyone at Helein or NCT correcting this address or notifying parties of a change of attorney, address, or e-mail address. On March 23, 2006, the Notice of Availability was properly served by e-mail to the e-mail address Helein provided to the official service list, and by U.S. mail to the physical address listed. Therefore, Helein cannot now claim that the Notice of Availability of the Draft Decision was improperly served on a secretary of the law firm "who does not work on NCT matters and has never been responsible for making Firm filings in California relating to NCT in general…." (App. at p. 3.) The Helein Law Group bears the responsibility for its failure to review the contents of this e-mail, and the hard copy of the Notice of Availability served by U.S. mail.

In addition, although the Application claims that no one in the Helein office received a copy of the Notice of Availability in the mail, there are no declarations attached to the Application for Rehearing asserting that fact. As stated above, there is a valid certificate of service showing that the Notice of Availability was mailed to NCT's attorney of record. The filing of a proof of service creates a rebuttable presumption that the service was proper. (Floveyor Int'l, Ltd. v. Superior Court (1997) 59 Cal. App. 4th 789, 795.) There is nothing in the Application sufficient to overcome the presumption that service was regularly and properly done. Again, it is Helein's responsibility to update the service list if there has been a change of attorney, to ensure that documents are routed to the correct attorney. We further find Helein's claim that no one in the Helein office received a copy of the Notice of Availability suspect in light of its claims that it also failed to receive copies the Final Decision, the comments of Pacific Bell, and the comments of Verizon. If a number of documents are claimed

to not have been received from different sources, all with valid certificates of service, it implies error on the part of the recipient, not the sender.

Finally, contrary to Helein's claim that the Draft Decision was not subject to the required comment period, the Notice of Availability clearly states that the draft decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed, and that parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's Rules of Practice and Procedure. Comments on the Draft Decision were in fact filed on April 12, 2006, by Pacific Bell, Verizon, and CPSD. The Draft Decision was not voted on until April 27, 2006, more than 30 days after its issuance.

In this case, we find that the relevant portions of the Public Utilities Code and the Commission's Rules of Practice and Procedure were complied with. The Draft Decision was properly served upon the parties, appeared on the Commission's agenda for at least 30 days after its mailing date, and was subject to comments. Accordingly, Helein's claims that it was denied notice and an opportunity to comment because the Draft Decision was not properly served are without merit.

2. The Commission Has Jurisdiction to Sanction Helein and NCT for Violations of the Public Utilities Code and Commission Rules of Practice and Procedure.

The Application next asserts that by the time the ALJ issued the Draft Decision in March, 2006, NCT's CPCN had been revoked, and the Commission had thus been "divested" of jurisdiction over NCT. The Application also claims that since the instant proceeding was not instituted for the purpose of disciplining a practitioner, and Helein was never notified that its conduct as a practitioner had come into question since no disciplinary proceeding was instituted by the Commission, the Commission never had any jurisdiction over Helein to impose sanctions for a Rule 1 violation. The Application further argues that since Helein "is not and never could be a carrier, has never and can never subject itself

to Commission jurisdiction as a carrier, issuing sanctions in a proceeding dealing with carrier compliance is not within the Commission's jurisdiction, is *ultra vires* and of no effect." (App. at pp. 9-10.)

These allegations are without merit. First, Helein provides no support for its contention that the revocation of NCT's CPCN somehow divests the Commission of jurisdiction in this case. Pursuant to Rule 86.1 of the Commission's Rules of Practice and Procedure, "vague assertions as to the record or the law, without citation, may be accorded little attention." Second, the Decision imposes penalties for violations that occurred while NCT still had a valid CPCN and resolves an Application that was pending before it. The Commission has broad constitutional and statutory authority to regulate public utilities, including the power to enforce the public utilities code, as well as its own orders and rules. For example, section 701 gives the Commission expansive authority to "do all things" necessary and convenient in the exercise of its power and jurisdiction. Pursuant to that authority, we fined NCT for past violations of statutes, and Commission decisions and rules. Therefore there is no merit to Helein's claim that the Commission was divested of jurisdiction over NCT in this proceeding.

As to the claims regarding the Helein's Rule 1 violation, by participating in Commission proceedings, a party is subject to requirements set forth in Rule 1 of the Commission's Rules of Practice and Procedure, and a party must act accordingly. Specifically, Rule 1 provides that "[a]ny person who signs a pleading or brief, enters an appearance at a hearing, or transact business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State…and never to mislead the Commission or its staff by an artifice or false statement of fact or law." Rule 1 is directed at practitioners before the Commission as well as parties. Moreover, sections 2111 and 2112 provide that any corporation or person, *other than a public utility and its officers*, who violates or fails to comply with any rule of the

Commission, or aids or abets any public utility in any violation or noncompliance of the law relating to public utilities or Commission orders or rules, is guilty of a misdemeanor and punishable by a fine and/or imprisonment. Therefore, by participating in this proceeding, Helein agreed to subject itself to the Commission's authority to impose sanctions for violations of the Commission's rules and provisions of the Public Utilities Code.

In its Application, Helein admits that the Commission has authority to discipline those that practice before it. However, it further claims that because this was not a proceeding instituted for the purpose of disciplining a practitioner, the Commission was without jurisdiction to impose sanctions on Helein. Again, Helein fails to cite any authority in support of its claim. Regardless, Helein is mistaken that the Commission must institute a separate proceeding in order to sanction parties for a Rule 1 violation. Any violation or violations of Rule 1 may subject a party to sanctions, including but not limited, to prohibiting a party from participating in a Commission's proceeding**,** disallowing intervenor's compensation for unreasonable conduct, rejecting pleadings, holding a party in contempt under section 2113, and any other sanctions permitted under the law.

Specifically, section 2113 provides: "Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, *and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record*." (Emphasis added.) Accordingly, we have the same power to punish parties for contempt or providing false or misleading information as the courts do. A court of law has the authority to sanction practitioners, law firms, and parties that appear before it for making false statements, contempt, and other improper conduct, and does not have to initiate separate proceedings in order to do so. All that is required is notice and a reasonable opportunity to respond. (See e.g., Cal. Code Civ. Proc.,

§§ 128, 128.7; Fed. Rules Civ.Proc., rule 11, 28 U.S.C.) The Commission does not have a clear practice of initiating a separate proceeding to investigate and address alleged Rule 1 violations. (See e.g., Determination of Just Compensation for Acquisition of the Fontana Division of the San Gabriel Valley Water Company [D.89-04-82] (1989) 31 Cal.P.U.C.2d 573.) In addition, as discussed above, the Helein Law Group was provided notice and an opportunity to be heard as to the Rule 1 violations. Accordingly, the Commission properly exercised its authority in finding that Helein violated Rule 1.

3. The Basis for the Rule 1 Violation Is Supported by the Record and Is Well-Reasoned.

Helein next argues that there is no rational basis for the Commission's finding that NCT and Helein violated Rule 1.

The record contains the following evidence in support of the Rule 1 violations:

On March 1, 2004, the assigned ALJ issued a ruling that directed NCT to respond to the following inquiry:

> Are there any complaints alleging…significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, or currently pending at…the Federal Communications Commission (FCC), or other state commissions? If so, please identify and describe all such complaints.

NCT's legal counsel, the Helein Law Group, responded as follows on May 13, 2004:

> To NCT's knowledge, there have never been any complaints alleging…significant wrongdoing with respect to Ms. Bartel or NCT that have been decided by, nor are currently pending at…the Federal Communications Commission (FCC), or other state commissions.

The ALJ issued a second Ruling on May 19, 2004, which again asks:

> Are there any regulatory actions, proceedings, or complaints (collectively, "complaints") alleging fraud or significant wrongdoing with respect to Bartel or NCT that have been decided by, or are currently pending at, the California Public Utilities Commission, the Federal Communications Commission, or other state commissions.

In its Second Amendment to Application, filed June 3, 2004, NCT's legal counsel, the Helein Law Group, again responded that there "are no regulatory actions, proceedings, or complaints alleging fraud or significant wrongdoing with respect to Ms. Bartel or NCT" which were currently pending before the Commission, the FCC, or any other state commission.

On December 21, 2004, the ALJ issued a Ruling providing notice of intent to file a draft decision that denied the application, found NCT guilty of a Rule 1 violation, and imposed a fine. Attached to the Ruling were documents that showed that at the time NCT submitted the above responses, NCT was being investigated by the Florida Public Service Commission (Florida PSC) for 42 slamming violations. (See December 21, 2004 ALJ Ruling and attachments thereto.) In that December 21, 2004 Ruling, the assigned ALJ invited NCT to respond to the Ruling and to request an evidentiary hearing. NCT filed a response on January 31, 2005, that was prepared by the Helein Law Group. In its response, NCT denied that it made a false statement. NCT claimed that it believed the Florida PSC's investigation was an informal staff inquiry, not a formal complaint alleging significant wrongdoing. NCT also claimed that the Florida PSC's investigation "concerned actions and individuals that have no legal or other relationship to Ms. Bartel or her ownership and operation of NCT."

The record sufficiently supports our findings that the Helein Law Group and NCT violated Rule 1. We found that these documents demonstrated that NCT and the Helein Law Group knew when they submitted the above response to the ALJ's March 1, 2004 inquiry, that NCT was being investigated by the Florida PSC for 42 slamming violations, which collectively constitute

significant wrongdoing. (D.06-04-048 at p. 4.) Thus, we found that NCT and the Helein Law Group knowingly made a false statement regarding a material fact when they informed the Commission that there were no pending complaints at another state commission alleging significant wrongdoing.

We further found that NCT's response on January 31, 2005, contained two false statements. First, that the Florida PSC's investigation was not an informal staff inquiry as NCT claimed. Attachment 1 of the Decision shows that the Florida PSC opened a docket in January 2004 to investigate NCT.[7] Attachment 2 shows that the Florida PSC was scheduled to consider at its meeting on May 3, 2004, a staff recommendation to require NCT to pay a fine of $420,000 for slamming. Attachment 3 shows that the Florida PSC deferred its staff's recommendation to a later meeting in response to a written request from the Helein Law Group dated April 29, 2004.[8]

We further found a second falsehood in NCT's response submitted on January 31, 2005, in the statement therein that the Florida PSC's investigation "concerned actions and individuals that have no legal or other relationship to Ms. Bartel or her ownership and operation of NCT." Attachment 1 of the Decision shows that the Florida PSC opened a docket in January 2004 for the express purpose of investigating NCT for slamming. NCT was owned by Bartel at the time. Thus, the Florida PSC's investigation concerned actions (i.e., slamming) that were directly related to NCT. Attachment 2 of the Decision contains a summary of the Florida PSC staff's investigation of NCT which repeatedly states

[7] NCT was notified of the Florida PSC docket and was placed on the service list for the docket.

[8] On January 26, 2005, the Florida PSC adopted a settlement in which NCT agreed to make a "voluntary contribution" of $151,500 and to implement procedures to prevent slamming.

that the staff had investigated both NCT and Bartel for slamming. Attachment 3 demonstrates that NCT and the Helein Law Group were aware that NCT and Bartel were being investigated by the Florida PSC for slamming.

In its Application for Rehearing, Helein again asserts that the "Florida matter" was merely an informal staff investigation which does not constitute a "complaint." Helein also attempts to argue that the Florida investigation did not involve "substantial wrongdoing" but "routine slamming allegations." According to Helein, the ALJ's inquiry modifies the term "substantial wrongdoing" by the word "fraud," which Helein asserts necessitates a finding of intentional misconduct. Helein asserts that "slamming" does not involve intentional misconduct. Helein also points to the fact that NCT settled the investigation with the Florida PSC "without admitting guilt." According to Helein, this proves that there was no "substantial wrongdoing" involved because the investigation was settled without any admission of wrongdoing. Helein also argues that the finding that NCT violated Rule 1 lacks rational support because NCT was merely following its counsel's advice as to how to answer the ALJ's inquiry, and there accordingly was no "intentional deception."

We have already heard and rejected these arguments as they are without merit. As demonstrated by the documents attached to the Decision, the Florida PSC was conducting a formal investigation of NCT for slamming. The Decision finds that both NCT and the Helein Law Group knew on May 13, 2004, that NCT was being formally investigated for slamming. Moreover, contrary to Helein's claim, the term "substantial wrongdoing" was not modified by the word "fraud" in the ALJ's inquiry. The inquiry asks whether there are any proceedings "alleging fraud ***or*** significant wrongdoing." (Emphasis added). "Slamming" is specifically prohibited in California pursuant to section 2889.5. It is also illegal in Florida under Rule 25-4.118 of the Florida Administrative Code.

A violation of the slamming statute is a significant crime and carries with it a hefty penalty, including possibility of revocation of a company's CPCN.

In this case, the Florida PSC was considering fining NCT $420,000 for 42 violations of the Florida slamming statute. The April 21, 2004, Florida PSC Staff Recommendation, attached to the Decision as Attachment 2, further indicates that these were not "routine" or "accidental" slams, but were the result of failure to comply with specific verification methodologies required by the Florida PSC's slamming rules and the "apparent egregious nature of the marketing utilized by the company." (D.06-04-048, Attachment 2 at p.17.) The Staff Recommendation also alleges that NCT was part of a group of companies that sustained "the misleading telemarketing activities by transferring operations to a new company so as to give the appearance that the company under investigation has corrected the problems causing the apparent slamming infractions." (Id. at p. 10.)

Therefore, in light of the above-mentioned circumstances, we find no merit to Helein's claim that it could not have known that an allegation of a slamming violation would constitute an allegation of "substantial wrongdoing." Under any reasonable interpretation, these allegations constitute allegations of "substantial wrongdoing."

Nor does it matter that the Florida matter was settled by NCT "without admitting guilt." The fact remains that there were *allegations* of substantial wrongdoing, precisely the information sought by the ALJ's inquiry. Additionally, part of the settlement required NCT to take corrective measures to ensure the problem would not re-occur. This is further indication that the slamming allegations were serious.

Finally, there is no merit to Helein's claim that NCT was merely following advice of counsel and should not be found guilty of a Rule 1 violation. Again, we have heard this argument and rejected it when we found that both NCT and Helein knowingly made a false statement.[9] Under Rule 1, parties as well as

[9] Helein also notes in a footnote that the "'Canons of Ethics' bind counsel to zealously represent their clients within the bounds of law" implying that this excuses Helein from the finding of a Rule 1 violation. (App. at p. 17.) However, California Business and

practitioners have an obligation to ensure that statements provided to the Commission are not false or misleading. At the very least, the facts discussed above show that NCT had a reckless disregard for the truth when it allowed these false statements to be submitted to the Commission.

4. The Commission Properly Applied Sanctions Against the Entire Law Firm.

Helein argues that if the Commission is not inclined to vacate the Decision, the sanctions for the Rule 1 violation should be narrowly applied only to the individual attorney that submitted the wrongful responses, who, according to Helein, no longer works for the firm. According to Helein, the "alleged misconduct was committed by one attorney, not the entire Firm." (App. at p. 19.) In support of its argument, Helein points to Rule 1, which refers to "any *person*" who signs a pleading or brief, thus indicating its intention to apply to individuals that practice before the Commission.

Again, we find Helein's argument without merit. The misconduct attributed to the Helein Law Group was not just committed by one attorney. Loubna Haddad signed the May 13, 2004, and June 3, 2004, responses which contained false statements. The principal partner of the firm, Charles Helein, signed the January 31, 2005, response which contained two false statements. Charles Helein also signed the Application for Rehearing, which continues to assert statements that the Commission found to be false. Helein provides no declarations or other evidence that the associate in question acted without partner review of documents. Nor did Helein provide any evidence that the associate or partner in question violated firm policy as to how it applies quality control to ensure that documents do not contain false or misleading information. Since more than one attorney at the firm, including the senior partner, has submitted

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Professions Code section 6068, subdivision (d), clearly provides that a lawyer has a duty "to employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and never to seek to mislead the judge by artifice or false statement of fact or law."

documents containing false information, it is reasonable for us to infer that the firm does not properly take steps to ensure its employees practice ethically, and it was reasonable to extend the specific sanction imposed here against this entire firm. Moreover, although the Decision does not specifically mention section 2111, the Decision finds that "NCT's legal counsel, the Helein Law Group, aided and abetted the provision of false information." (D.06-04-048, Finding of Fact No. 6.) Section 2111 provides for sanctions against any "corporation or person" that aids or abets any violation of the law or Commission orders or rules. Accordingly, it was appropriate for the Commission to fashion a remedy against the Helein Law Group to protect the public interest.

IV. CONCLUSION

For the reasons stated above, we find that Helein's Application for Rehearing fails to state grounds which warrant rehearing.

IT IS THEREFORE ORDERED that:

1. The Helein Law Group is granted party status for the limited purpose of filing the instant Application for Rehearing of Decision 06-04-048.

2. The Helein Law Group's Application for Rehearing of Decision 06-04-048 is denied.

3. This proceeding is closed.

This order is effective today.

Dated September 7, 2006, at San Francisco.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
RACHELLE B. CHONG
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.